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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

BUDDIE RAYMOND MINNICK,

Defendant and Appellant.

C093480

(Super. Ct. No. CRF200001435)

Defendant Buddie Raymond Minnick was convicted of committing a lewd and lascivious act upon a child under 14 years of age, sexual penetration by a foreign object against a child under 14 years of age, and oral copulation of a child under 14 years of age. The trial court sentenced defendant to seven years in prison. On appeal, defendant contends: (1) the prosecutor committed prejudicial error by improperly vouching for the credibility of a witness; and (2) trial counsel was ineffective for not objecting to the prosecutor's improper vouching. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

In May 2020, defendant lived with his fiancé, Amy G., in a blended household in Yuba City. Amy's ex-husband and their four children, including 13-year-old K. C., also lived in the home. As of May 2020, defendant and Amy had lived together for two and one-half years. Defendant and Amy had one child together, and defendant acted as a father figure to Amy's other children.

On May 11, 2020, Amy started a new job which sometimes required her to work overnight. Defendant began touching K. C. inappropriately while Amy was at work. During May 2020, defendant touched K. C. on the inside of her thighs, penetrated K. C.'s vagina with his fingers on more than five occasions, licked K. C.'s vagina, and instructed K. C. to stroke his penis.

Defendant was charged with committing a lewd and lascivious act upon a child under 14 years of age, sexual penetration with a foreign object on a child under 14 years of age, and oral copulation of a child under 14 years of age. Defendant testified and denied ever touching K. C. in an inappropriate manner.

During closing argument, defense counsel stated that K. C.'s sister, F. T., never claimed defendant "did anything wrong to her, ever did any sexual acts to her, [or] in any way embarrass[ed] her sexually or [did] anything that she was concerned about." Defense counsel continued, "[L]et's talk about K. C. and her testimony. She is testifying, yes, some three months after the event. But she doesn't know time, doesn't know dates, doesn't know what her mother does, doesn't know what day of the week, doesn't know what part of the month. She thinks [the sexual acts started] the day her mother [started her new job]."

During rebuttal argument, the prosecutor responded to these arguments by stating, "[defense counsel] claims [F. T.] didn't tell you that the defendant did anything wrong with her so somehow he can't possibly molest another child because he didn't molest [F. T.], so I guess you're either a sexually perverted serial molester or not a molester at

all. There's no in between. [¶] I don't buy it. That's not what the law says. That's not what common sense says. [¶] Just because it didn't happen to [F. T.] doesn't mean that it didn't happen to K. C. I mean, you saw them on the stand. They were very different. They testified very differently. The level of development to the two girls is very different. [¶] You can't just assume -- because that's what the Defense is asking you to do, is assume, make up facts in your mind as to why it didn't happen to [F. T.], just because of that it didn't happen to K. C. That's inappropriate because your verdict needs to be based on evidence, evidence that was presented in the courtroom, not your imagination or speculation." No objection was raised by defense counsel during this portion of the rebuttal argument.

The prosecutor further responded to defense counsel's argument by stating, "So, again, why make up a lie so horrendous? Why sit here through an entire morning of testimony with the defense attorney [who] kept picking at her and asking her to commit to remembering dates, when she clearly testified she couldn't remember specific dates. That somehow becomes the main issue in the case[,] and we think that 13-year-old girl is going to be able to have this photographic memory of exact dates and times. And that's the reason you should find him not guilty. [¶] I'm not buying it, ladies and gentlemen. The evidence that was presented proves that defendant is guilty beyond a reasonable doubt and that's the only verdict you can come up with in this case." No objection was raised by defense counsel during this portion of the rebuttal argument.

A jury found defendant guilty on all three counts. The trial court sentenced defendant to seven years in prison. Defendant appeals.

## DISCUSSION

Defendant contends the prosecutor improperly vouched for K. C.'s credibility during closing argument. Defendant claims the prosecutorial error<sup>1</sup> occurred when, during rebuttal argument, the prosecutor stated, "I'm not buying it," and "I don't buy it," in response to defense counsel's contention K. C. fabricated the allegations against defendant because she wanted her mother to break up with defendant and reconcile with her biological father. We disagree with defendant's characterization of the record. The record shows the prosecutor's statements were not made in response to defense counsel's argument K. C. fabricated her allegations so her parents would get back together. The prosecutor's statements were instead made in response to the contention defendant could not have molested K. C. because K. C.'s sister, F. T., did not also accuse defendant of molesting her, and in response to the contention that K. C. was not credible because she was unable to remember the exact dates and times of defendant's sexual conduct. It is with this understanding of the record that we address defendant's claims.

"A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process. Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial [error] under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the jury. Furthermore, . . . when the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury

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<sup>1</sup> We use the term "prosecutorial error" rather than "prosecutorial misconduct," although the terms are often used interchangeably. As our Supreme Court has explained, " '[t]he term prosecutorial "misconduct" is somewhat of a misnomer to the extent that it suggests a prosecutor must act with a culpable state of mind. A more apt description of the transgression is prosecutorial error.' " (*People v. Centeno* (2014) 60 Cal.4th 659, 666-667.)

construed or applied any of the complained-of remarks in an objectionable fashion.”  
(*People v. Morales* (2001) 25 Cal.4th 34, 44.)

“It is well settled that making a timely and specific objection at trial, and requesting the jury be admonished . . . , is a necessary prerequisite to preserve a claim of prosecutorial [error] for appeal.” (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1328.) Because defendant’s trial counsel did not object to the prosecutor’s argument, the claim is forfeited.

Foreseeing this result, defendant argues trial counsel rendered ineffective assistance by failing to object to the prosecutor’s argument. To establish ineffective assistance, a defendant must show that counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms and, as a result, the defendant suffered prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688 [80 L.Ed.2d 674, 693-694].) To determine whether counsel was ineffective we will first determine if the prosecutor’s argument constituted improper vouching, warranting an objection. Thus, despite the forfeiture, we will address the merits of defendant’s claim.

Impermissible vouching occurs when “ ‘the prosecutor places the prestige of the government behind a witness through personal assurances of the witness’s veracity or suggests that information not presented to the jury supports the witness’s testimony.’ ” (*People v. Seumanu, supra*, 61 Cal.4th at p. 1329.) A prosecutor may not bolster a case “ ‘by invoking . . . personal prestige, reputation, or depth of experience, or the prestige or reputation of [the] office, in support of it.’ [Citation.] Similarly, it is [prosecutorial error] ‘to suggest that evidence available to the government, but not before the jury, corroborates the testimony of a witness.’ ” (*Ibid.*) “ ‘ “[A] prosecutor is given wide latitude during argument. The argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom.’ ” ’ ” (*People v. Bonilla* (2007) 41 Cal.4th 313, 336-337.)

Here, the prosecutor's comments did not amount to improper vouching. The prosecutor did not invoke his " " "personal prestige, reputation, or depth of experience, or the prestige or reputation of [his] office . . . ." ' ' ' ' ' ( *People v. Seumanu*, *supra*, 61 Cal.4th at p. 1329.) Nor did the prosecutor vouch for K. C.'s credibility based on facts outside the record. Rather, throughout closing and rebuttal argument the prosecutor directed the jury to focus on the evidence presented during the trial. After the "I don't buy it" remark, the prosecutor reminded the jury "[its] verdict need[ed] to be based on evidence, evidence that was presented in the courtroom, not [its] imagination or speculation." Immediately after the "I'm not buying it" remark, the prosecutor again focused the jury's attention on the evidence: "The evidence that was presented proves that the defendant is guilty beyond a reasonable doubt . . . ." The two complained-of remarks were brief comments on defense theories posited during closing argument. The prosecutor's argument "did little more than urge the jury not to be influenced by counsel's arguments, and to instead focus on the testimony and evidence in the case." ( *People v. Stanley* (2006) 39 Cal.4th 913, 952.) There was no " " 'reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.' ' ' ' ' ( *People v. Morales*, *supra*, 25 Cal.4th at p. 44.)

Having addressed the merits of the prosecutorial error claim, we now turn back to defendant's claim that his trial counsel was ineffective for failing to object to the prosecutor's argument. We conclude the claim lacks merit. The prosecutor's rebuttal argument did not constitute improper vouching and was therefore proper argument. Trial counsel cannot be deemed to have provided ineffective assistance for failing to object to proper argument. ( *People v. Turner* (2004) 34 Cal.4th 406, 431 [where a defendant's prosecutorial error claim fails, "his ineffective assistance of counsel claim predicated on the failure to object to this [error] fails"].) Thus, trial counsel's failure to object was not deficient when measured against an "objective standard of reasonableness" under

“prevailing professional norms.” (*Strickland v. Washington, supra*, 466 U.S. at p. 687-688 [80 L.Ed.2d at pp. 693-694].)

DISPOSITION

The judgment is affirmed.

/s/  
Robie Acting P. J.

We concur:

/s/  
Hoch, J.

/s/  
Earl, J.